

# BOARD OF ZONING APPEALS

## MINUTES

6:30 PM

October 19, 2011

City Council Chambers

**MEMBERS PRESENT:** Bernie Bossio, George Papandreas, Jim Shaffer, Tom Shamberger

**MEMBERS ABSENT:** Leanne Cardoso

**STAFF:** Christopher Fletcher, AICP, Heather Dingman, AICP

**I. CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM

**II. MATTERS OF BUSINESS:** Approval of September 21, 2011 hearing minutes . Shamberger made a motion to approve the minutes as presented; seconded by Papandreas. Motion carried unanimously with Shaffer abstaining due to his absence at the August 21<sup>st</sup> meeting.

**III. OLD BUSINESS:** None

**IV. NEW BUSINESS:**

- A. V11-31 / Walgreens / 1591 Earl Core Road:** Request by TRC Realty (dba ~~Walgreens~~) for variance relief from Article 1347.04 as it relates to setback standards for property at 1591 Earl Core Road; Tax Map 31, Parcels 111 and 111.1; B-2, Service Business District.

Fletcher read the Staff Report, stating that the petitioner seeks to develop a 13,650 square foot *Walgreens Pharmacy* at the existing *Southern States* location in Sabraton. Bruceton Farm Service, Inc. obtained site plan approval (Case No. S11-18-III) in August 2011 by the Planning Commission for the development of a new *Southern States* store on the former Sterling Faucet site, which will make the subject site available for the development of the proposed *Walgreens Pharmacy*. Addendum A of this report illustrates the location subject site.

The following table identifies the required and proposed building setbacks within the B-2 District.

Setback Type	Required Setback	Proposed Setback	Required Variance
Minimum Front	15 feet	47 feet	17 feet
Maximum Front	30 feet		
Minimum Side (north)	20 feet	60.2 feet	N/A
Minimum Side (south)	5 feet	92.5 feet	N/A
Minimum Rear	40 feet	33.5 feet	6.5 feet

The reason for situating the building as proposed appears to accommodate the petitioner's desire to separate the circulation patterns of the drive-thru lane from the parking areas.

Bossio recognized petitioner Jack Thompson, TRC Realty, 8869 Brecksville Road, Brecksville, Ohio. Mr. Thompson stated that he is very excited about this project and has been working with ownership for about four years. He stated that his company built the Walgreens on the north end of town and they are excited to be building a pharmacy inside the City. He feels the Staff Report covers all of the details adequately.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the request. There being no comments in favor, he asked if anyone was present to speak in opposition. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the Findings of Fact submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that a 17-foot variance be granted from the maximum front setback standard and a 6.5-foot variance be granted from the minimum rear setback standard for petition V11-31 as requested with the following condition:

1. That the final landscape plan submitted with the building permit application include, to the satisfaction of the Planning Division, evergreen shrubs/bushes along the length of the rear property boundary between the proposed retaining wall and guard rail facilities to screen the view of the site from the adjoining rails-to-trails facility.

Shaffer made a motion to approve the Findings of Facts amended by Staff; Papandreas seconded the motion. Motion carried unanimously.

**NOTE:** The following Findings of Facts were included in the motion:

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The depth of the subject development site appears to be less than most commercial development sites along the Earl Core Road corridor due to the geometry of the Deckers Creek Road and Earl Core Road intersection at the subject site's southern boundary. Drive-thru facilities appears to be a customary amenity provided at similar pharmacy uses. Separating the proposed drive-thru circulation from the site's parking areas given the size of the proposed building appears to necessitate variance relief from the maximum front and minimum rear setback standards for the B-2 District.

**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Adjacent properties along the Earl Core Road commercial corridor appear to enjoy setbacks greater than 30 feet. Additionally, similar variance relief has been granted for the Auto Zone (V10-26) and the U.S. Department of Agriculture (V07-38) developments located along Earl Core Road and within close proximity to the subject site.

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

It will stay within the same built environment characteristics as the adjacent properties.

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

It should improve internal vehicular circulation. It will keep within the land-use and built environment characteristics of the general vicinity.

Shaffer made a motion to approve petition V11-31 as requested with Staff's recommended condition; seconded by Papandreas. Motion carried unanimously.

- B. V11-32 / Walgreens / 1591 Earl Core Road:** Request by TRC Realty (dba ~~Walgreens~~) for variance relief from Article 1347.06 as it relates to parking between the front façade and street and Article 1367.08 as it relates to minimum landscape buffer for property at 1591 Earl Core Road; Tax Map 31, Parcels 111 and 111.1; B-2, Service Business District.

Fletcher read the Staff Report stating that the petitioner seeks to develop a 13,650 square foot *Walgreens Pharmacy* at the existing *Southern States* location in Sabraton. Bruceton Farm Service, Inc. obtained site plan approval (Case No. S11-18-III) in August 2011 by the Planning Commission for the development of a new *Southern States* store on the former Sterling Faucet site, which will make the subject site available for the development of the proposed *Walgreens Pharmacy*. Addendum A of this report illustrates the location subject site.

Article 1347.06 (B) provides that:

~~No~~ parking spaces shall be permitted between the front façade of a building and any street right-of-way.

The petitioner's proposed site plan illustrates parking between the building's front façade and Earl Core Road, which requires variance relief.

The reason for situating the building as proposed appears to accommodate the petitioner's desire to separate the circulation patterns of the drive-thru lane from the parking areas.

Article 1367.08 (C) provides that development with parking located between the street and the building line, the following shall apply:

%d) A ten-foot wide buffer shall be provided for the length of any parking area abutting the street. The buffer area shall contain at least one (1) two inch (2+) caliper trees for every twenty (20) feet and at least three (3) shrubs of a least three (3) gallons in size clustered between each two (2) trees.+

The proposed buffer yard along the Earl Core Road frontage is 6.8 feet, which requires a 3.2-foot variance. The petitioner's proposed 24-foot drive aisle and 5-foot sidewalk along the front of the building is appropriate given the resulting separation of vehicular and pedestrian circulation. The Planning and Zoning Code's intent of screening parking spaces when developed between the building and the fronting street can still be accomplished within proposed 6.8-foot buffer yard. However, careful consideration of selected plant material will be necessary to ensure that visibility is not obstructed for vehicles exiting from the site onto Earl Core Road.

Bossio recognized petitioner Jack Thompson, 8869 Brecksville Road, Brecksville, Ohio, who stated that he had nothing to add to the Staff Report.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the request. There being no comments in favor, he asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the Findings of Fact+submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that variance relief be granted to allow parking between the building and Earl Core Road and a 3.2-foot variance be granted for the front buffer yard as requested.

Shamberger made a motion to approve the Findings of Facts as amended by Staff; seconded by Papandreas. Motion carried unanimously.

**NOTE:** The following Findings of Facts were included in the motion:

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The depth of the subject development site appears to be less than most commercial development sites along the Earl Core Road corridor due to the geometry of the Deckers Creek Road and Earl Core Road intersection at the subject site's southern boundary. Drive-thru facilities appear to be a customary amenity provided at similar pharmacy uses. Separating the proposed drive-thru circulation from the site's parking areas given the size of the proposed building along with separating pedestrian and vehicular circulation along the building's front façade appears to warrant variance relief as requested. Additionally, the proposed drive aisle created by the parking spaces along the building's frontage creates a cross-access alignment opportunity with the adjoining property to the north.

**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which is denied to this property, because:

The majority of properties along the Earl Core Road commercial corridor appear to enjoy parking between their respective buildings and Earl Core Road with limited to no landscape buffer yards screening said parking spaces. Additionally, similar variance relief has been granted for the Auto Zone (V10-28) and the U.S. Department of Agriculture (V07-39) developments located along Earl Core Road and within close proximity to the subject site.

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

It will be similar in characteristics to other adjacent properties and the built environment of the Earl Core Road commercial corridor.

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

It should improve internal vehicular circulation; separate pedestrian and vehicular circulation along the front of the building; and, be consistent with the land-use and built environment characteristics of the general vicinity.

Papandreas made a motion to approve petition V11-32 as requested; seconded by Shamberger. Motion carried unanimously.

- C. V11-33 / Walgreens / 1591 Earl Core Road:** Request by TRC Realty (dba ~~Walgreens~~) for variance relief from Article 1369 as it relates to signage for property at 1591 Earl Core Road; Tax Map 31, Parcels 111 and 111.1; B-2, Service Business District.

Fletcher read the Staff Report stating that the petitioner seeks to develop a 13,650 square foot *Walgreens Pharmacy* at the existing *Southern States* location in Sabraton. Bruceton Farm Service, Inc. obtained site plan approval (Case No. S11-18-III) in August 2011 by the Planning Commission for the development of a new *Southern States* store on the former Sterling Faucet site, which will make the subject site available for the development of the proposed *Walgreens Pharmacy*. Addendum A of this report illustrates the location subject site.

Appropriate to recently reviewed signage plans by the Board of Zoning Appeals that required multiple variance approvals (e.g. *McDonald's Restaurant* at 2932 University Avenue and *Auto Zone* at 1587 Earl Core Road), Staff organized the petitioner's sign variance requests into one

(1) petition so that the Board, without objection, can consider variance relief for a ~~Master Sign Plan~~ rather than considering each separately.

#### Wall Signage

Article 1369.07 (l) provides that the maximum wall sign area for nonresidential uses in the B-2 District is 0.6 square feet per linear foot of building frontage. The linear width of the proposed building's frontage along Earl Core Road is 130 feet, which calculates to a **maximum wall sign area of 78 square feet**.

The following table restates relevant portions of the ~~Sign Area Summary~~ table provided on the petitioner's wall signage plan (Sheet A-210 dated 04/26/2010) submitted with the variance application.

Sign No. Assigned	Description	Proposed Area
<b>Elevation No. 1</b> (side facing south toward Deckers Creek Road)		
1	25q. 11 1/2+Walgreens Script Sign	78.0 SF
2	18+24 HR Individual Letter	9.3 SF
3	18+Pharmacy Individual Letter	19.1 SF
4	5q. 6 3/8+WqSign	43.1 SF
<b>Elevation No. 2</b> (front facing east toward Earl Core Road)		
5	25q. 11 1/2qWalgreens Script Sign	78.0 SF
6	18+24 HR Individual Letter	9.3 SF
7	18+Pharmacy Individual Letter	19.1 SF
8	5q. 6 3/8+WqSign	43.1 SF
<b>Elevation No. 3</b> (side facing north toward <i>Auto Zone</i> )		
9	18q. 4 1/4+Walgreens Script Sign	39.0 SF
<b>Elevation No. 3</b> (rear facing west toward rail-trail facility)		
10	18q. 4 1/4+Walgreens Script Sign	39.0 SF
<b>TOTAL AREA</b>		<b>377 SF</b>

Staff worked closely with the petitioner in an effort to reduce the extent of requested variance relief. Several alternate wall signage scenarios were developed and considered.

Based on these discussions, the petitioner has agreed to eliminate signs 2, 6, 9, and 10, which are highlighted in yellow in the above table, thereby reducing the total wall sign area from 377 square feet to 280.4 square feet.

As such, **variance relief of 202.4 square feet** is required for the revised wall signage plan.

#### Post-and-Panel Signage

Article 1369.07 (F) provides that ~~%Post-and-Panel+~~type signs may not exceed 6 feet in height nor 32 square feet in area per side. Additionally, ~~%Electronic, Scrolling Message+~~type signs are only permitted in the B-5 and I-1 Districts.

The petitioner's proposed post-and-panel sign is 25 feet in area and 84.74 square feet in area. The petitioner has agreed to reduce the proposed height to 20 feet and the proposed area per side to 75 square feet.

As such, **variance relief of 14 feet in height and 43 square feet in area per side** is required for the revised post-and-panel sign.

It is the opinion of the Planning Division that the ~~%Electronic, Scrolling Message+~~type sign illustrated on the petitioner's proposed post-and-panel sign plan is not permitted in the B-2 District. Variance petitions are deviations from the minimum standards of the Zoning Ordinance and cannot permit a land use or sign type that is otherwise prohibited within a zoning district.

Additionally, Staff is concerned that the petitioner's request for variance relief to allow a twenty (20) foot post-and-panel sign may not be consistent with height variances for other single-occupant commercial developments within the Earl Core Road corridor. Specifically, Staff encourages the Board to weigh its variance relief granted to the neighboring *Auto Zone* development (Case No. V10-29), which limited the respective monument sign height to twelve (12) feet. The maximum height for both monument and post-and-panel signs is six (6) feet.

Bossio introduced the petitioner, Jack Thompson, 8869 Brecksville Road, Brecksville, Ohio who stated that the sign planning took the most time in working with the City. He wanted to add that the reason they asked for the 20 feet rather than 15 feet is to allow for a reader board if the City allows that at some point in the future.

Bossio stated that the Board cannot take into consideration what may happen in the future.

There being no further comments or questions by the Board, Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Bossio recognized Bob Abramovich, TRC Realty, Brecksville, Ohio, requested the Board allow the 280 feet of wall signage to be used on any or all sides of the building rather than limiting it to two walls.

There being no further comments in favor of the petition, Bossio asked if anyone was present to speak in opposition of the petition. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the ~~%Findings of Fact+~~submitted by the petitioner.

Assuming the Board agrees to consider variance relief for a ~~%Master Sign Plan+~~, Staff, in Addendum B of this report, recommends revisions to the petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

Staff recommends the following variance approval and conditions for the proposed Walgreensq Master Sign Plan, which are intended to reduce the extent of requested variances; encourage

the effective use of signs as a means of communication; maintain and enhance the pleasing look of the site and its contribution to the surrounding area; and, minimize adverse effects of signs on nearby public and private property:

1. That a 202.4 square foot variance be granted from the maximum area standard for all wall signage, provided that:
  - a. No wall signs may be erected on the rear façade facing the Rail-Trail facility.
  - b. With the exception of the drive-thru wall/awning signage illustrated on the submitted plans, no wall signs may be erected on the north side façade.
2. That a 43 square foot variance be granted from the maximum area standard AND a nine (9) foot height variance be granted from the maximum height standard for the proposed post-and-panel sign, provided that:
  - a. The height of the proposed post-and-panel sign shall not exceed fifteen (15) feet from grade to the top of said sign.
  - b. The upright post members of the post-and-panel sign are finished with masonry materials so that, to the satisfaction of the Planning Division, said sign integrates with and compliments the architectural vocabulary of the principal structure.
  - c. The post-and-panel sign may not obstruct, to the satisfaction of the City Engineer, clear sight lines for exiting vehicles.
3. That a final Master Sign Plan must be submitted with the building permit application and reviewed and approved by the Planning Division prior to building permit issuance to ensure compliance with the conditions set forth above.

Shaffer stated that he is not in favor of signage on all four walls, especially the walls facing the rail trail.

Shamberger stated that part of the new zoning was to do away with sign wars. The focus should be on making the buildings look nice and that the higher signage does not benefit anything. He recommends sticking with the 15 foot height recommended by Staff.

Papandreas made a motion to accept the Findings of Facts as amended by Staff; seconded by Shamberger. Motion carried unanimously.

**NOTE:** The following Findings of Facts were included in this motion:

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

~~Numerous businesses, including our competitor, CVS, across the street, have signage similar to what we are requesting from a size standpoint. It appears that the predominant commercial signage and messaging patterns within the Earl Core Road corridor exceed the maximum height and area standards set forth in the Planning and Zoning Code. Compliance with said maximum standards may result in a competitive disadvantage for the petitioner, particularly when a competing adjacent pharmacy use currently has signage that exceeds said standards.~~



**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

~~We do not want to be at a competitive disadvantage with our neighbors. It appears that the majority of commercial signs along the Earl Core Road corridor are nonconforming as most do not meet maximum area and maximum height standards set forth in Article 1369 of the Planning and Zoning Code.~~

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

~~It will be similar in size and design to other properties in the area and zoning district. The extent of requested variance relief has been reduced to better reflect existing signage patterns along the Earl Core Road corridor, which do not presently appear to harm public welfare, adjoining properties, or improvements.~~

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

~~It is a sign plan that fits in the with the surrounding area, is well thought out. The proposed Master Sign Plan appears to be consistent with the predominant commercial signage patterns of the Earl Core Road corridor, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variances in relation to the Master Sign Plan cannot contribute to nor mitigate existing traffic volumes on neighboring streets.~~

Shaffer made a motion to approve V11-33 with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

- D. V11-29 / Knowles / 730 Werner Street:** Request by Kris Knowles for variance relief from Article 1345.07 as it relates front façade fenestration ratio standards for property at 730 Werner Street; Tax Map 25, Parcel 345; B-1, Neighborhood Business District.

Fletcher read the Staff Report, stating that the petitioner seeks to raze an existing garage structure on the subject site and construct a mixed-use development. Addendum A of this report illustrates the location of the subject site.

On August 17, 2011, the petitioner received variance approval (V11-24) to encroach into the minimum rear setback standard along with conditional use approval (CU11-08) for off-site parking. Because of the recent presentation by the petitioner to the Board, Staff understands that the Board is familiar with the subject development program.

After developing the project's exterior designs further, the petitioner now seeks variance relief from Article 1345.07 (D) (5), which provides that:

~~%Front facades shall have a fenestration ratio of not less than sixty (60) percent.+~~

The proposed front elevation submitted by the petitioner illustrates a front façade fenestration ratio of 17%, which requires a **43% variance**.

It appears that the subject fenestration ratio is intended to provide pedestrian-scaled storefront windows. However, the fenestration standard is not specific to the street level as customarily provided in central business districts or pedestrian-scaled commercial areas. The petitioner's development will be the first mixed-use structure fronting Werner Street within the corresponding B-1 District. Additionally, there appears to be very little pedestrian traffic across the petitioner's development site that would benefit from a high degree of fenestration, whether at street level or not.

Bossio recognized the petitioner, Kris Knowles, 851 Grand Street, Morgantown, who stated that he is proposing something that will be mid-century fire-house meets modern type of development and he feels they are achieving that. He feels that it will be in keeping with the neighborhood and current venues.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the petition. There being no comments in favor, Bossio asked if anyone was present to speak in opposition to the petition. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the Findings of Fact submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that a 43% variance from the minimum front façade fenestration ratio within the B-1 District be granted for petition V11-29 as requested.

Shaffer made a motion to approve the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

**NOTE:** The following Findings of Fact were included in this motion:

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The 60 percent front façade fenestration standard appears to be more practicable and desirable for areas where a high degree of traffic, particularly pedestrian, either exists or may exist in the future. The standard appears to create and protect a built environment form that promotes pedestrian-scaled activity and commerce. Werner Street appears to serve more as access to garages and rear yards of properties fronting Ridgeway Avenue and Richwood Avenue. The proposed garage door design of the petitioner's front elevation at street level appears to be consistent with the predominant character along Werner Street.

**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There are no other buildings along Werner Street that meet the 60 percent front façade fenestration ratio standard as most buildings and properties along Werner Street front Ridgeway Avenue and Richwood Avenue.

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The granting of this variance would have no negative effect on public welfare or property values, because it will enable the construction of a building that is more consistent with the character of the neighborhood than would be achieved if the standard were observed.

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

There are no other structures along Werner Street that have a high degree of front façade elevation and the ratio of fenestration cannot contribute to nor mitigate congestion that exists along Werner Street.

Shamberger made a motion to approve V11-29 as requested; seconded by Papandreas. Motion carried unanimously.

- E. V11-30 / Knowles / 730 Werner Street:** Request by Kris Knowles for variance relief from Article 1345.07 as it relates awning standards for property at 730 Werner Street; Tax Map 25, Parcel 345; B-1, Neighborhood Business District.

Dingman read the Staff Report stating that the petitioner seeks to raze an existing garage structure on the subject site and construct a mixed-use development. Addendum A of this report illustrates the location of the subject site.

On August 17, 2011, the petitioner received variance approval (V11-24) to encroach into the minimum rear setback standard along with conditional use approval (CU11-08) for off-site parking. Because of the recent presentation by the petitioner to the Board, Staff understands that the Board is familiar with the subject development program.

After developing the project's exterior designs further, the petitioner now seeks variance relief from Article 1345.07 (F) (2), which provides that:

%A canvas or fabric awning may be placed extending from a building over the sidewalk and into the public right-of-way. Such awning must be placed no lower than nine (9) feet above the sidewalk and extend no closer than three (3) feet from the curb line.+

The proposed front setback of the building is five (5) feet, which is the minimum front setback in the B-1 District. The petitioner seeks to develop metal awnings across the building's front façade as an architectural feature that will encroach into the minimum front setback by four (4) feet. Because the petitioner's front property line is assumed to be the %curb line+, variance relief is required so that the proposed awnings may be one (1) foot from the %curb line+ and be constructed of materials other than canvas or fabric.

Bossio recognized the applicant, Kris Knowles, 851 Grand Street, Morgantown, who stated that he did not have anything to add to the report.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the petition. There being no comments in favor, he asked if anyone was present to speak in opposition of the petition. There being no

comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Dingman stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the ~~Findings of Fact~~ submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that a two (2) foot variance be granted so that the proposed awnings may be no closer than one-foot from the front property line AND the awnings may be constructed of materials other than canvas or fabric.

Shamberger asked for clarification as to why the request is for two feet when the variance need is one foot.

Fletcher stated that Planning and Zoning Code allows for the canvas awning to extend up to three feet, but since the proposed awning will extend four feet. The building will have a five-foot setback, which necessitates a one-foot variance.

At the request of the Board, Bossio went through each Finding of Fact, individually.

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The proposed structure will be the first mixed-use building along Werner Street and the first structure of any kind to include an awning feature. The intent of the awning appears to simply be an architectural feature desired by the petitioner to accent the intended design theme of the proposed building and should not adversely impact public improvements or the right-of-way. The setback of the proposed awning is contained within the petitioner's property boundaries and will not encroach into the Werner Street right-of-way.

Papandreas made a motion to approve the first Finding of Fact as revised by Staff; seconded by Shamberger. Motion carried unanimously.

**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Although the proposed awning feature appears to the first along Werner Street, most if not all the buildings along Werner Street do not appear to meet setback requirements for principal and accessory structures in both the B-1 District and R-1A District.

Papandreas made a motion to approve the Second Finding of Fact as revised by Staff; seconded by Shamberger. Motion carried unanimously.

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The setback of the proposed awning is contained within the petitioner's property boundaries and will not encroach into the Werner Street right-of-way.

Papandreas made a motion to approve the Third Finding of Fact as revised by Staff; seconded by Shamberger. Motion carried unanimously.

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the awning setback variance should not diminish or increase property values and cannot contribute to or mitigate congestion that is already present along Werner Street.

Papandreas made a motion to approve the Fourth Finding of Fact as revised by Staff; seconded by Shamberger. Motion carried unanimously.

Papandreas made a motion to approve V11-30 as requested; seconded by Shamberger. Motion carried unanimously.

**F. CU11-10 / Dixon / 1591 Deckers Creek Blvd:** Request by Jerry Dixon for conditional use approval of a ~~%Personal Storage Facility+~~use for property at 1591 Deckers Creek Blvd; Tax Map 31, Parcel 114; B-2, Service Business District.

Dingman read the Staff Report stating that the petitioner seeks to construct a 7,000 square foot storage building for his personal use. The petitioner has stated that the proposed building will not be used as leased storage space; will not be used to operate a commercial use; nor be occupied as a residential use. Addendum A of this report illustrates the site's location.

After carefully reviewing land uses provided in Article 1329, ~~%Definitions+;~~ Article 1331.05, ~~%Permitted Land Uses+;~~ and, Article 1331.06, ~~%Supplemental Regulations pertaining to Permitted Land Uses Table+;~~ there does not appear to be a specific land use classification provided in the Planning and Zoning Code that corresponds with the proposed storage building as a principal structure.

Article 1375.05, ~~%Administrative Interpretations+;~~ which is attached hereto as Addendum B, provides guidance in these instances.

It is the opinion of the Planning Division that the proposed storage building use is substantially similar to a ~~%Personal Storage Facility+~~use, which is defined in Article 1329.02 as:

~~%PERSONAL STORAGE FACILITY or SELF-SERVICE STORAGE FACILITY . A building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or businesses for self-service storage of personal property. Also commonly referred to as mini-warehouses.+~~

Table 1331.05.01 ~~%Permitted Land Uses+~~ provides that ~~%Personal Storage Facility+~~uses are permitted in the B-2 District as a conditional use.

Article 1375.05 ~~%Administrative Interpretations+(E) (4)~~ provides that:

~~%If the proposed use is most similar to a use allowed only as a conditional use in the district in which it is proposed to be located, then any use interpretation authorizing such use shall be subject to the issuance of a condition use permit.+~~

In addition to the subject conditional use approval, Mr. Dixon has submitted three (3) variance petitions that must be approved for the development as proposed.

Bossio recognized the applicant, Jerry Dixon, 3025 Earl Core Road who stated that he feels the Staff Report states his request adequately.

Bossio said he had a problem with such a large storage building [7,000 square feet] being for personal use. He does not feel that this large of a storage space fits the character of the area.

Shamberger asked how this would fit within the B-2 business district.

Dixon said that he feels it corresponds with the other buildings around it.

Shamberger disagreed and said he struggles with allowing a use that it could never be used for any other use in the future because of the lack of parking.

Mr. Dixon stated that it is a steel building that acts as a canopy. It will not be heated. It will not be constructed with masonry materials.

Papandreas wanted to clarify that if it ever ceased to be a personal storage area, it would have virtually no use for anyone else due to the lack of parking and non-conforming use status that would result.

There being no further comments or questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the petition. There being no comments in favor, Bossio asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Dingman stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the ~~findings of Fact~~ submitted by the petitioner.

Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that should the subject conditional use be approved, the following conditions be included:

1. That, because only two (2) on-site parking spaces will be provided in the proposed development, the subject storage building may not be used for storage, either by lease or any other formal or informal agreement, by any other person or entity other than the owner of said storage building.
2. That, because only two (2) on-site parking spaces will be provided in the proposed development, the subject storage building may not be used for the conduct of business or commercial activity nor occupied by a commercial use.
3. That the subject storage building may not be used for residential occupancy.

4. That, for the purpose of screening the building from view of adjoining developed commercial properties, evergreen trees, to the satisfaction of the Planning Division, must be planted the entire length of the building along the rear property line and along at least the first twenty (20) feet of side property boundaries measured from the rear property line. No building permit may be issued until the final landscape plan is approved by the Planning Division in accordance with the condition stated herein.
5. That no less than two (2) paved off-street parking spaces be developed as illustrated on the proposed site plan.

The Board proceeded with considering the Findings of Facts individually:

**Finding of Fact #1** – Congestion in the streets is not increased, in that:

The site is located at the end of a dead end street and ~~will~~ should generate ~~minimum~~ minimal traffic ~~during~~ associated with the drop-off and pickup of the owner's stored personal items.

Shaffer made a motion to approve Finding of Fact No. 1 as amended by Staff; seconded by Papandreas. Motion carried unanimously.

**Finding of Fact #2** . Safety from fire, panic, and other danger is not jeopardized, in that:

~~The building is being proposed for personal storage with minimal occupancy during drop-off/pickup of stored items. All related building and fire code life safety requirements will be addressed to the satisfaction of the Chief Building Code Official and the City Fire Marshall respectively.~~

Papandreas made a motion to approve Finding of Fact No. 2 as amended by Staff; seconded by Shaffer. Motion carried unanimously.

**Finding of Fact #3** . Provision of adequate light and air is not disturbed, in that:

~~Lighting will be minimally impacted because the surrounding properties are vacant land excluding the CVS to the rear and air will not be disturbed in that the equipment stored onsite will not be of an industrial nature. The proposed storage building will be one-story and should accordingly not adversely impact light distribution and air flow patterns that currently existing around the subject site.~~

Papandreas made a motion to approve Finding of Fact No. 3 as amended by Staff; seconded by Shaffer. Motion carried unanimously.

**Finding of Fact #4** . Overcrowding of land does not result, in that:

~~The building will meet the front and side setbacks of 15 feet and 5 feet respectively. A rear setback variance is being requested but it will still be larger than the side setbacks. With the exception of the rear setback encroachment, all setback and lot coverage standards will be observed.~~

Papandreas made a motion to approve Finding of Fact No. 4 as amended by Staff; seconded by Shaffer. Motion failed 2-2, with Bossio and Shamberger voting Nay.

Fletcher reminded the Board that the motion to approve Finding of Fact No. 4 failed to receive a majority vote. Fletcher stated that the Board must determine an affirmative Findings of Fact for each of the eight questions before it can approve the petition. The Board is also obligated to articulate one or more negative findings before it can deny the petition.

Bossio said he is uncomfortable with a building that size having only two parking spaces along with the encroachment of the rear setback.

Papandreas asked if it would be inappropriate to consider the encroachment in this Finding of Fact, as that would be addressed under the related variance request.

Fletcher stated that the Board's consideration of the conditional use petition is not simply the use but the site plan as well. Under Robert's Rules of Procedure, Fletcher suggested that one of the Board members who voted Nay offer a motion stating a negative finding.

Bossio asked if there is a personal storage use requirement for parking.

Fletcher stated that the parking requirement for a %Personal Storage Facility+ use is three parking spaces plus one space per 100 storage units. Fletcher reminded the Board that the proposed use is not a %Personal Storage Facility+and that in working with the applicant, Staff felt that two parking spaces were adequate given the fact that leased storage units within the proposed building were not a part of the proposed conditional use.

After discussion concerning the proposed and future use potential of the building, Fletcher suggested that, based on the Board's discussion, Finding of Fact No. 8 might be the appropriate finding to take up the issue of land use.

Shamberger made a motion to approve Finding of Fact No. 4 as amended by Staff; seconded by Papandreas. Motion carried unanimously.

**Finding of Fact #5** . Undue congestion of population is not created, in that:

~~The building will be used for storage of personal items there will be no residential or commercial traffic generated from this site. The site will generate minimal pedestrian traffic. No residential use will occupy the proposed storage building.~~

Papandreas made a motion to approve Finding of Fact No. 5 as amended by Staff; seconded by Shamberger. Motion carried unanimously.

**Finding of Fact #6** . Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The site is located at the end of a dead end street so transportation is impacted minimally; the building will not have water or sewer hookups; and, schools, parks or other public requirements will not be impacted by ~~this site~~ the proposed storage building.

Shamberger made a motion to approve Finding of Fact No. 6 as amended by Staff; seconded by Papandreas. Motion carried unanimously.



**Finding of Fact #7** . Value of buildings will be conserved, in that:

~~Similar storage buildings for commercial use are within the vicinity of the site, Nearby properties fronting on the same street are currently vacant.~~

Papandreas made a motion to approve Finding of Fact No. 7 as amended by Staff; seconded by Shaffer. Motion carried 3-1 with Shamberger voting Nay.

**Finding of Fact #8** . The most appropriate use of land is encouraged, in that:

~~Other large storage buildings are located in the area. The subject development site is located toward the end of a dead end street with very little vehicular or pedestrian traffic and limited visibility for primary commercial corridors of Earl Core Road and Deckers Creek Road.~~

Papandreas made a motion to approve Finding of Fact No. 8 as amended by Staff; seconded by Shaffer. Motion failed 2-2, with Bossio and Shamberger voting Nay.

Shamberger made a motion to find in the negative for Finding of Fact No. 8 stating:

The most appropriate use of land is NOT encouraged, in that: The proposed personal storage garage is not the highest and best use as proposed given the types of land uses permitted in the B-2 District under Table 1331.05.01 Permitted Land Uses+.

Bossio seconded the motion. Motion failed 2-2, with Papandreas and Shaffer voting Nay.

Fletcher suggested that the Board consider tabling consideration of CU11-10 so that a site visit could be scheduled so that the Board could see the site and surrounding area first hand.

Shamberger made a motion to table CU11-10; seconded by Papandreas. Motion carried unanimously.

Bossio asked Mr. Dixon if he would consider requesting the Board to postpone its consideration of the related variance petitions under New Business Agenda Items G, H, and I until after the Board visits the site prior to its November meeting. Mr. Dixon stated that he agreed and asked the Board to postpone its consideration of his related variance petitions.

**NOTE:** The Board combined its consideration of New Business Agenda Items J and K.

- J. V11-37 / Walker / 1248 Oxford Place:** Request by Barry Dickson, on behalf of Glen Walker, for variance relief from Article 1333.04 as it relates to setbacks for property at 1248 Oxford Place; Tax Map 7, Parcel 175; R-1, Single-Family Residential District.
- K. V11-38 / Walker / 1248 Oxford Place:** Request by Barry Dickson, on behalf of Glen Walker, for variance relief from Article 1373.02 as it relates to extending a nonconforming setback for property at 1248 Oxford Place; Tax Map 7, Parcel 175; R-1, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to raze an existing carport and replace it with a two-car garage as well as enclose an existing back porch on the left side of the house. Addendum A of this report illustrates the location of the subject site.

To advance the Board's consideration of the subject variance petitions resourcefully, Staff submits a combined Staff Report addressing the above referenced variance petitions. Staff recommends that the Board, without objection, consider the two (2) variance petitions jointly by combining the public hearings for same as well as combining the Board's decision.

Bossio noted that no objection was offered and that the Board agreed to combine the petitions accordingly.

Article 1333.04 provides that the minimum side setback in the R-1 District is 10 feet. The proposed setback of the new two-car garage addition along the right side of the house is 6.13 feet, which requires a four-foot side setback variance.

Fletcher stated that Mr. Dickson noted that the former garage was converted to living area and that the proposed two-car garage addition will return the former garage space to one of the bays of the proposed two-car garage addition. Fletcher stated that Mr. Dickson also noted that the footprint of the new garage addition will not exceed the footprint of the existing one-bay carport combined with the former converted garage.

Article 1373.02 (A) provides that:

No legal, pre-existing structure may be enlarged, moved, or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals.

The existing left side setback of the structure is 6.20 feet. Although enclosing the back porch on the left side of the house will not result in the structure becoming closer to the side property boundary, variance approval is required as the extent of its non-conformity is increased by extending the length of the non-conforming setback along and approximately parallel to said left side property boundary.

Bossio recognized the applicant Barry Dickson, 1126 Canyon Road, Morgantown. Mr. Dickson stated that Oxford Street is in one of Morgantown's older and more mature neighborhoods. The Walkers would like to improve the appearance of their home and will be a benefit to the neighborhood.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the request. There being no comments in favor, he asked if anyone was present to speak in opposition to the request.

Bossio recognized Barbara Hildebrand of 1237 Cambridge Avenue who stated that their property lies significantly below the Walkers' property and they are concerned about more water run-off. She stated that the neighborhood has had an increasing problem with storm sewer backups, with sewage and water getting in the basements. She would like to be assured that all stormwater issues be taken into consideration before the granting of this request.

Bossio asked Mr. Dickson if MUB was requiring a retention system. Mr. Dickson answered no.

Fletcher offered to make arrangements with Ms. Hildebrand to meet with MUB at the site to understand how the stormwater requirements relate to the proposed additions and to get their questions and concerns addressed.

Bossio recognized Haynes Ralston of 1241 Cambridge Avenue who stated that she is also concerned about stormwater, but realizes that it will be addressed. She also expressed concern about the variance and feels that it should be left at 10 feet.

There being no further comments in opposition, Bossio declared the public hearing closed and recognized Mr. Dickson for a rebuttal limited to five minutes.

Mr. Dickson stated that the existing carport is already exceeding the setback and the structure will not encroach any more than what is currently already there. The existing carport will be removed and its existing footprint will be used to build the garage addition.

Bossio asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the Findings of Fact submitted by the petitioner.

Assuming no objection to combine the variance petitions is offered and the Board supports the subject variance petitions, Staff recommends in Addendum B of this report a combined set of findings of fact addressing each of the requested variance petitions

Shaffer made a motion to accept the Findings of Fact as amended by Staff; seconded by Shamberger. Motion carried unanimously.

**NOTE:** The following Findings of Fact were included in the motion:

**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The subject parcel is 65 feet in width, which is less than the minimum lot frontage standard of 70 feet in the R-1 District. The setback on the left side of the house is a pre-existing, nonconforming, grandfathered setback. The existing carport currently encroaches into the minimum side setback standard. The proposed two-car garage addition will not extend closer than the existing carport.

**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The proposed improvements and additions to the subject house will not increase the encroachment into the minimum side yard setbacks that already exists by the structure on the left side and the carport on the right side.

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed improvements and additions to the subject house appear to be consistent with home improvements completed over the past several years within the immediate area and the Suncrest Neighborhood that have resulted in additional enclosed parking and livable areas within existing structures.

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The single-family residential use will remain the same; the proposed improvements and additions to the subject house, including the proposed renovations to the front porch area and roofline should increase the market value of the subject property; and the requested variances cannot contribute to nor mitigate existing traffic congestion along neighboring streets.

Shaffer made a motion to approve V11-37 and V11-38 with the condition that the overall footprint of the existing structure not be increased by the proposed additions; seconded by Shamberger. Motion carried unanimously.

- L. **CU11-11 / Metro Towers / 2567 University Avenue:** Request by Metro Towers, LLC for conditional use approval of two multi-family structures for property located at 2567 University Avenue; Tax Map 15, Parcels 230.2, 231, 232, 233, 233.1, and 273; O-I, Office and Institutional District.

Fletcher read the Staff Report stating that Table 1331.05.01 **Permitted Land Uses** provides that multi-family dwelling uses in the O-I District require conditional use approval by the Board of Zoning Appeals.

On November 17, 2010, the Board of Zoning Appeals approved the petitioner's conditional use petition (Case No. CU10-16) to convert the previous office building use of the two (2) existing structures within the former **Grand Central Station** development into 125 one-bedroom units.

As a part of the petitioner's ongoing redevelopment of the subject site, which is now recognized as the **Metro Towers** development, the petitioner seeks to develop two (2) additional multi-family structures, the location of which is illustrated in Addendum A of this report.

The two proposed buildings will have 32 two-bedroom units per building for a total of 64 units with 128 bedrooms. The **East Building** is the proposed structure closest to University Avenue. The **West Building** is the proposed structure closest to the unopened Ensign Avenue right-of-way.

Table 1365.04.01 **Minimum Off-street Parking Requirements** provides that the development of multi-family dwellings must include one (1) parking space for each one-bedroom dwelling unit and 0.75 parking spaces per occupant of units that contain two or more bedrooms.

The aggregate number of dwelling units and related bedroom composition for the entire Metro Towers development is 125 one bedroom units and 64 two bedroom units. As such, the minimum number of parking spaces that must be provided for the entire development is 221 spaces. The proposed site plan illustrates the parking plan for the entire development, which includes 316 spaces; 95 more parking spaces than required.

Due to the proposed increase in residential units within the Metro Towers development and resultant increase in traffic generation, City Engineer Terry Hough required the petitioner to prepare a traffic impact analysis.

Mr. Steven Buchanan, PE of Alpha Associates, Inc. submitted a report summarizing his comparison of the traffic generation of the previous office building use (100,000 SF for both buildings) to the proposed multi-family residential use (189 total apartments).

The City Engineer concurs with Mr. Buchanan's conclusion that:

% If the adjoining streets can accommodate the traffic generated under the existing condition (100,000 SF of general office space), the adjoining streets should be able to accommodate traffic generated under the proposed condition (apartments) with little or no impact to the traffic on those adjoining streets.+

On October 13, 2011, the Planning Commission approved the related Development of Significant Impact Site Plan petition (Case No. S11-21-III).

Bossio recognized David Biafora, 6200 Mid Atlantic Drive, Morgantown, who stated that he did not have anything to add to the Staff Report but would answer any questions the Board may have.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the petition. There being no comments in favor, he asked if anyone was present to speak in opposition to the petition. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the % Findings of Fact+ submitted by the petitioner. Staff recommends revisions to the petitioner's Findings of Fact as provided in Addendum B of this report.

It is the opinion of the Planning Division that the proposed development represents a unique opportunity to increase residential density at a site that is strategically situated between West Virginia University's campuses. Because the site is well served by public transit and is within walking and biking distance of primary destinations, the development appears to link residents to alternate modes of transportation thereby reducing auto dependency of development residents and mitigating increased traffic congestion.

Staff recommends that the Board approve the subject conditional use petition with the following conditions:

1. That Variance Petitions V11-39 and V11-40 must be approved by the Board of Zoning Appeals prior to any building permit issuance.
2. That a Minor Subdivision Petition realigning the 30-foot right-of-way of the unopened portion of Ensign Avenue, to the satisfaction of the City Engineer, must be approved by the Planning Commission and the related final plat be recorded at the Monongalia County Courthouse prior to the issuance of a permanent Certificate of Occupancy for either of the two proposed multi-family structures.
3. The development shall meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.

4. That all shared dumpsters within and serving the Metro Towers development shall be enclosed with masonry materials at least six (6) feet in height and include opaque gates.
5. That no parking spaces may remain, if applicable, or be developed within a public right-of-way.
6. That fire lanes must be provided for each building to the satisfaction of the City's Fire Marshall.
7. That the petitioner work with Mountain Line Transit to develop a shelter facility on or near the project site to improve access and utilization of public transit by residents of and near the Metro Towers development.

Shamberger made a motion to approve the Findings of Facts as amended by Staff; seconded by Papandreas. Motion carried unanimously.

**NOTE:** The following Findings of Fact were included in the motion:

**Finding of Fact #1** – Congestion in the streets is not increased, in that:

The proposed multi-family residential use as proposed should generate less traffic than the current non-residential uses based on the City Engineer's review of the petitioner's traffic impact analysis. Because the site is well served by public transit and is within walking and biking distance of primary destinations, the development appears to link residents to alternate modes of transportation thereby lessening auto dependency and reducing traffic congestion.

**Finding of Fact #2** . Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed multi-family dwelling units and common areas will be required to meet all related Building Code and Fire Code standards prior to the issuance of occupancy permits.

**Finding of Fact #3** . Provision of adequate light and air is not disturbed, in that:

The proposed development complies with maximum building height requirements and the significant topographical changes of the development site predominantly effect light distribution and air circulation.

**Finding of Fact #4** . Overcrowding of land does not result, in that:

The proposed development provides more open space around the buildings than customarily provided due to steep hillsides.

**Finding of Fact #5** . Undue congestion of population is not created, in that:

The proposed development provides more open space around the buildings than customarily provided due to steep hillsides and there is 95 parking spaces provided in addition to the minimum number of spaces required by the Planning and Zoning Code.

**Finding of Fact #6** . Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The site appears to be adequately served by existing public utility, infrastructure, and service facilities along with public transportation.

**Finding of Fact #7** . Value of buildings will be conserved, in that:

The significant investment that appears necessary in order to convert the existing buildings from non-residential uses to multi-family apartment units and the construction of two additional multi-family structures should enhance the value and market performance of the structures and site.

**Finding of Fact #8** . The most appropriate use of land is encouraged, in that:

The addition of two multi-family structures on the development site appears to represent a unique opportunity to return and modestly increase residential densities to a site that is strategically situated between WVU's campuses.

Papandreas made a motion to approve CU11-11 with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

**NOTE:** The Board combined its consideration of New Business Agenda Items M and N.

- M. V11-39 / Metro Towers / 2567 University Avenue:** Request by Metro Towers, LLC for variance relief from Article 1343.04 as it relates to setback standards for property located at 2567 University Avenue (east building); Tax Map 15, Parcels 230.2, 231, 232, 233, 233.1, and 273; O-I, Office and Institutional District.
- N. V11-40 / Metro Towers / 2567 University Avenue:** Request by Metro Towers, LLC for variance relief from Article 1343.04 as it relates to setback standards for property located at 2567 University Avenue (west building); Tax Map 15, Parcels 230.2, 231, 232, 233, 233.1, and 273; O-I, Office and Institutional District.

Fletcher read the Staff Report stating that as a part of the petitioner's ongoing redevelopment of the former %Grand Central+ development, which is now recognized as the %Metro Towers+ development, the petitioner seeks to develop two (2) additional multi-family structures, the location of which is illustrated in Addendum A of this report.

To advance the Board's consideration of the subject variance petitions resourcefully, Staff submits a combined Staff Report. Staff recommends that the Board, without objection, consider the two (2) variance petitions jointly by combining the public hearings for same as well as combining the Board's decision.

Bossio noted that no objection was offered and that the Board agreed to combine the petitions accordingly.

The two proposed buildings will have 32 two-bedroom units per building for a total of 64 units with 128 bedrooms. The %East Building+is the proposed structure closest to University Avenue. The %West Building+is the proposed structure closest to the unopened Ensign Avenue 30-foot right-of-way.

The following table identifies the setback standards for the O-I District along with the proposed setbacks and variance requirements, if applicable.

Setback Type	Required Setback	Proposed Setback	Required Variance
<b>“East Building”</b> (fronting University Avenue)			
Minimum Front	15 feet	60.1 feet	<b>35.1-foot variance</b>
Maximum Front	25 feet		
Minimum Side (south)	30 feet	15 feet	<b>15-foot variance</b>
Minimum Side (north)	30 feet	218 feet	N/A
Minimum Rear	40 feet	17.8 feet	<b>22.2-foot variance</b>
<b>“West Building”</b> (fronting unopened Ensign Avenue 30-foot right-of-way)			
Minimum Front	15 feet	25 feet	N/A
Maximum Front	25 feet		
Minimum Side (south)	30 feet	10 feet	<b>20-foot variance</b>
Minimum Side (north)	30 feet	245 feet	N/A
Minimum Rear	40 feet	24 feet	<b>16-foot setback</b>

Bossio recognized the applicant David Biafora, 6200 Mid-Atlantic Drive who stated that the property was subdivided and included a cross-easement on the deed.

There being no questions by the Board, Bossio opened the public hearing portion of the meeting asking if anyone was present to speak in favor of the petitions. There being no comments in favor, he asked if anyone was present to speak in opposition to the petitions. There being no comments in opposition, Bossio declared the public hearing closed and asked for Staff recommendations.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the Findings of Fact submitted by the petitioner.

Assuming no objection to combine the variance petitions is offered, Staff recommends in Addendum B of this report a combined set of findings of fact addressing each of the requested variances and that variance relief be granted as requested by the petitioner.

Shaffer made a motion to accept the Findings of Fact as amended by Staff; seconded by Papandreas. Motion carried unanimously.

**NOTE:** The following Findings of Fact were included in the motion:



**Finding of Fact #1** – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The proposed site plan identifies the parcel configuration and the O-I District required setbacks for the subject development sites, which illustrate that very limited buildable area appears to remain for development given the geometry of the parcels and building envelope, the topography of the site, and the alignment of the private road connecting University Avenue to Sixth Street.

**Finding of Fact #2** . The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that very few if any of the existing structures within the immediate O-I District comply with the rather large side and rear setback standards.

**Finding of Fact #3** . The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed setback encroachments appear to be consistent with the setbacks afforded to multi-family residential development within the neighboring R-3 District; the development pattern for which should therefore not be detrimental to the public welfare nor impede upon adjoining property or improvements.

**Finding of Fact #4** . The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The majority of redevelopment over the last several years within the immediate O-I District appears to have been multi-family residential construction. The ability of the subject multi-family development to increase the market value of properties within the immediate area should not be adversely impacted by the requested setback variances. The setback variances cannot contribute to nor mitigate traffic congestion currently present on neighboring streets.

Papandreas made a motion to approve V11-39 and V11-40 as requested; seconded by Shamberger. Motion carried unanimously.

**V. OTHER BUSINESS:**

A. Public Comments: None

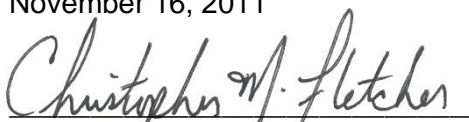
B. Staff Comments: None

**VI. ADJOURNMENT: 8:20 PM**

MINUTES APPROVED:

November 16, 2011

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP